

before the opposing party serves either an answer or a motion for summary judgment.”¹

Defendants have not filed an answer or a motion for summary judgment. Thus, Rule 41(a)(1)(A)(i) would still be available to Plaintiff. Defendants to date have not sought leave to file a reply to Plaintiff’s response in which she proposed a voluntary dismissal or responded in anyway to oppose voluntary dismissal. Furthermore Rule 41(a)(1) does not set forth any requirements for the form of a notice of dismissal. Therefore, the Court will treat Plaintiff’s response as a notice of voluntary dismissal pursuant to Rule 41(a)(1). Plaintiff’s Complaint is dismissed, and Defendants’ Motion to Dismiss for Lack of Subject Matter is denied as moot.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: February 18th, 2009.

¹ Fed. R. Civ. P. 41(a)(1).